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16 UNITED STATES DISTRICT COURT
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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19 RACHEL CALDWELL, an individual,

Case No.:

20
21 Plaintiffs,

22 v.

23 LULAROE, LLC, a California limited
24 liability company; and DOES 1 through
25 10, inclusive,

26 Defendants.
27
28

COMPLAINT FOR:

1. **Copyright infringement;**
2. **Vicarious and/or Contributory Copyright Infringement**

JURY TRIAL DEMANDED

1 Plaintiff RACHEL CALDWELL, an individual (“Plaintiff”), by and through
2 her undersigned counsel, complaining of the defendants LULAROE, LLC, a
3 California limited liability company; and DOES 1 through 10, inclusive
4 (collectively, “Defendants”), respectfully alleges as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiff creates and obtains rights to unique two-dimensional non-
7 functional artworks for gallery display and use on various products. Plaintiff owns
8 these designs in exclusivity and exploits these designs for profit by selling products
9 bearing the designs or entering into licensing agreements for sale or display by
10 third parties. Defendants have knowingly and intentionally used one such design in
11 the production of unauthorized goods which infringe Plaintiff’s copyrights.

12 **JURISDICTION AND VENUE**

13 2. The Court has original subject matter jurisdiction over Plaintiff’s
14 federal claims arising under the Copyright Act of 1976, Title 17 U.S.C., § 101 et
15 seq. under 28 U.S.C. § 1331, 1338 (a) and (b).

16 3. This Court has personal jurisdiction over the Defendants because the
17 events or omissions giving rise to the claim occurred, the tortious acts occurred,
18 and a substantial part of the injury took place and continues to take place, in this
19 judicial district and/or each of the defendants can be found in this judicial district.

20 4. Venue is proper in the United States District Court for the Central
21 District of California pursuant to 28 U.S.C §§ 1391(b), 1391(c), and 1400(a) on
22 information and belief that: (a) this is a judicial district in which a substantial part
23 of the events giving rise to the claims occurred the tortious acts occurred, and a
24 substantial part of the injury took place and continues to take place; and (b) this is
25 a judicial district in which Defendants may be found.

26 **THE PARTIES**

27 5. Plaintiff RACHEL CALDWELL is an individual with her principal
28 place of business in the County of Chester, State of Pennsylvania.

1 6. Upon information and belief, defendant LULAROE, LLC (“Lularoe”)
2 is, and at all times relevant was, a California limited liability company doing
3 business as “LuLaRoe” and doing business within the jurisdiction of this Court.

4 7. Defendants DOES 1 through 10 are individuals and/or entities whose
5 true names and capacities are presently unknown to Plaintiff. At such time as said
6 defendants' true names and capacities become known to Plaintiff, Plaintiff will
7 seek leave to amend this Complaint to insert said true names and capacities of such
8 individuals and/or entities.

9 8. Upon information and belief, at all times relevant herein, Defendants,
10 including Does 1 through 10, inclusive, and each of them, were and still are the
11 partners, agents, employers, and/or employees of the other named Defendants, and
12 each of them; that in so doing the things alleged, said Defendants were acting
13 within the course and scope of said partnership, agency, or employment; and that
14 in so doing the things alleged, said Defendants were acting at all times with the
15 knowledge, consent, and authorization of each of the other Defendants.

16 9. Upon information and belief, at all times relevant herein, Defendants,
17 including Does 1 through 10, inclusive, and each of them, are the alter egos of each
18 other; are characterized by a unity of interest in ownership and control among
19 themselves such that any individuality and separateness between them have
20 ceased; are a mere shell instrumentality and conduit through which Defendants
21 carried on their business by use of each others' names; completely controlled,
22 dominated, managed, and operated each others' business to such an extent that any
23 individuality or separateness of the Defendants does not and did not exist;
24 completely failed to observe any corporate formalities; and intermingled the assets
25 of each other, and other entities affiliated with them, to suit the convenience of
26 themselves and in order to evade payment of obligations and legal liability to
27 various customers and creditors.

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PLAINTIFF'S COPYRIGHT

10. Plaintiff owns, and had owned prior to the infringing acts complained of herein, United States Copyright Registration No. VAu 1-271-071 which includes a two-dimensional textile design she has internally designated as Warrior Owl ("Design").

DEFENDANTS' INFRINGING CONDUCT

11. In or around March 2017, Plaintiff discovered that Defendants were selling cell phone covers that bear designs that are identical or substantially similar to Plaintiff's Design ("Infringing Goods").

12. Upon information and belief, Defendants have misappropriated the Design, and are selling Infringing Goods online and to retail stores throughout the United States, including but not limited to within this judicial district.

13. Upon information and belief, Defendants are, without Plaintiff's authorization, unlawfully reproducing, importing, distributing and/or selling Infringing Goods in this judicial district that feature a design that is identical, or substantially similar to, the Design.

14. Upon information and belief, Defendants' infringing use of the Design is not limited to the Infringing Goods described above, and other goods Defendants created, manufactured, caused to be manufactured, imported, distributed, and/or sold may infringe Plaintiff's copyright in the Design.

15. On or about May 4, 2017, Plaintiff, through her counsel, addressed a letter to Defendant LuLaRoe demanding, among other things, that Defendants immediately cease and desist from using, copying, reproducing, distributing, displaying, ordering, purchasing, manufacturing, offering for sale or advertising the Design in any way. Plaintiff also demanded that Defendants provide Plaintiff's counsel with a written accounting of each and every use of the Design by Defendants, or any person or entity working with or for Defendants and to provide Plaintiff's counsel with the names, addresses, and contact information for the

1 manufacturers, stores, websites, and companies used by Defendants in relation
2 with the Design. Plaintiff further demanded that Defendants provide Plaintiff's
3 counsel with copies of all sales receipts, invoices, customer records, accounting
4 records, and inventories of and relating to the Design.

5 16. To date, Defendants have not responded to Plaintiff's letter or
6 complied with Plaintiff's demands.

7 17. Upon information and belief, Defendants continue to misappropriate
8 the Design and to unlawfully reproduce, import, distribute, and/or sell Infringing
9 Goods, in this judicial district, featuring a design, which is identical, or
10 substantially similar to the Design.

11 **FIRST CLAIM FOR RELIEF**

12 **(For Copyright Infringement - Against All Defendants)**

13 18. Plaintiff repeats, reiterates and realleges each and every allegation
14 contained in paragraphs designated 1 through 17, inclusive, of this Complaint, as if
15 fully set forth herein at length.

16 19. Plaintiff is informed and believes and thereon alleges that Defendants,
17 and each of them, infringed Plaintiff's copyright by creating, making and/or
18 developing directly infringing and/or derivative works from the Design and by
19 producing, distributing and/or selling Infringing Goods.

20 20. Due to Defendants' acts of infringement, Plaintiff has suffered
21 substantial damages to her business in an amount to be established at trial.

22 21. Due to Defendants' acts of infringement, Plaintiff has suffered general
23 and special damages in an amount to be established at trial.

24 22. Due to Defendants' acts of copyright infringement as alleged herein,
25 Defendants, and each of them, have obtained direct and indirect profits they would
26 not otherwise have realized but for their infringement of the Design. As such,
27 Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly
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1 attributable to Defendants' infringement of the Design in an amount to be
2 established at trial.

3 23. Plaintiff is informed and believes and thereon alleges that Defendants,
4 and each of them, have imported, manufactured, cause to be manufactured and/or
5 sold Infringing Goods.

6 24. Upon information and belief, Defendants also began such activities
7 although they were fully aware of Plaintiff's superior rights to the Design.
8 Therefore, Defendants' acts of copyright infringement as alleged above were, and
9 continue to be, willful, intentional and malicious, subjecting Defendants, and each
10 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
11 Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per
12 infringement. Further, Defendants', and each of their willful and intentional
13 misappropriation and/or infringement of Plaintiff's copyrighted Design renders
14 Defendants, and each of them, liable for statutory damages as described herein.
15 Within the time permitted by law, Plaintiff will make her election between actual
16 damages and statutory damages. Plaintiff is also entitled to preliminary and
17 permanent injunctive relief.

18 **SECOND CLAIM FOR RELIEF**

19 **(For Vicarious and/or Contributory Copyright Infringement**

20 **- Against All Defendants)**

21 25. Plaintiff repeats, realleges and incorporates herein by reference as
22 though fully set forth the allegations contained in Paragraphs 1 through 24,
23 inclusive.

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1 26. Plaintiff is informed and believes and thereon alleges that Defendants
2 knowingly induced, participated in, aided and abetted in and profited from the
3 illegal reproduction and/or subsequent sales of Infringing Goods featuring the
4 Design as alleged hereinabove.

5 27. Plaintiff is informed and believes and thereon alleges that Defendants,
6 and each of them, are vicariously liable for the infringements alleged herein
7 because they had the right and ability to supervise the infringing conduct and
8 because they had a direct financial interest in the infringing conduct.

9 28. By reason of the Defendants', and each of their, acts of contributory
10 infringement as alleged above, Plaintiff has suffered and will continue to suffer
11 substantial damages to her business in an amount to be established at trial, as well
12 as additional general and special damages in an amount to be established at trial.

13 29. Due to Defendants' acts of copyright infringement as alleged herein,
14 Defendants, and each of them, have obtained direct and indirect profits they would
15 not otherwise have realized but for their infringement of the Designs. As such,
16 Plaintiffs are entitled to disgorgement of Defendants' profits directly and indirectly
17 attributable to Defendants' infringement of the Design, in an amount to be
18 established at trial.

19 30. Plaintiffs are informed and believe and thereon allege that Defendants,
20 and each of them, have imported, manufactured, cause to be manufactured and/or
21 sold Infringing Goods.

22 31. Upon information and belief, Defendants also began such activities
23 although they were fully aware of Plaintiff's superior rights to the Design.
24 Therefore, Defendants' acts of copyright infringement as alleged above were, and
25 continue to be, willful, intentional and malicious, subjecting Defendants, and each
26 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
27 Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per
28 infringement. Further, Defendants', and each of their, willful and intentional

misappropriation and/or infringement of Plaintiff's copyrighted Design renders Defendants, and each of them, liable for statutory damages as described herein. Within the time permitted by law, Plaintiff will make her election between actual damages and statutory damages. Plaintiff is also entitled to preliminary and permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands the following relief against Defendants, jointly and severally, with respect to each claim for relief:

a. That Defendants, their agents and servants be enjoined from selling Infringing Goods, or otherwise infringing Plaintiff's copyright in the Design;

b. That Plaintiffs be awarded all profits of Defendants plus all losses of Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq.;

c. That Plaintiff be awarded her attorneys' fees as available under the Copyright Act 17 U.S.C. § 101 et seq.;

d. Directing such other relief as the Court may deem appropriate to prevent the Defendants from participating in this or other copyright infringements; and

e. Such other relief as the Court may deem appropriate.

Dated: May 11, 2017

NOVIAN & NOVIAN, LLP

By: /s/ Farhad Novian

FARHAD NOVIAN
JOSEPH A. LOPEZ
SHARON RAMINFARD

Attorneys for Plaintiff
RACHEL CALDWEL

DEMAND FOR JURY TRIAL

A jury trial is demanded pursuant to Fed. R. Civ. P. 38.

Dated: May 11, 2017

NOVIAN & NOVIAN, LLP

By: /s/ Farhad Novian
FARHAD NOVIAN
JOSEPH A. LOPEZ
SHARON RAMINFARD

Attorneys for Plaintiff
RACHEL CALDWEL